Anticompetitive Effects of Vertical Territorial and Customer Restrictions and its Antitrust Regulation

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Abstract

Nowadays, the legal system and practice of law enforcement in China still has not yet drawn a red line of vertical non-price restrictions represented by vertical territorial and customer restrictions. Combining modern distribution system practices with economic theories, this paper first analyzes the view that vertical territorial and customer restrictions would restrict normal arbitrage activities of vendors and consumers through economic theories and hamper free diffusion of commodities' circulation efficiency to a certain extent so as to eliminate or restrict competition. It explained the anticompetitive effects caused by these restrictions, including facilitating price discrimination and price fixing and damaging consumer interest. In addition, taking the first judicial judgment on vertical monopoly agreement, i.e., Beijing Rubbing Company V. Johnson Company as an example, this paper illustrates vertical territorial and customer restrictions also lead to price controlling. It finally puts forward necessities of proper antitrust regulation and suggests China adopt the principle of general prohibition with certain exceptions. However, as to the specific exceptions that could be applied, this paper suggest their impacts of eliminating or restricting competition and effects on consumer welfare and social public interest should be considered under the rule of reason, which should be one of the areas in need of attention and research in the future.

Keywords: vertical territorial restriction; vertical customer restriction; price discrimination; vertical monopoly agreement dispute; anticompetitive effects; antitrust regulation

1. Introduction

At present, the legal system and practice of law enforcement in China mainly pays close attention to regulation on fixing the price and restricting the minimum price for resale to a third party, and has not yet drawn a red line of vertical non-price restrictions, such as vertical territorial and customer restrictions. In fact, the National Development and Reform Commission of the People's Republic of China (hereafter, "NDRC",PRC) had announced its punishment decisions on wine and milk powder enterprises for vertical price restrictions, which did help to break manufacturers' restriction on circulation efficiency. However, these decisions haven't been able to affect the spread of free circulation efficiency restricted by manufacturers, let alone to fundamentally eliminate the manufacturers' limitation on competition in circulation and to enhance the circulation efficiency as a whole. Although there are small differences in forms and mechanisms between these two types of restrictions, they did affect free diffusion of circulation efficiency and constraint free competition. Therefore, regulation on vertical non-price restrictions represented by vertical territorial and customer restrictions helps to essentially break the restriction of free spread of circulation efficiency, thus promoting the active, appropriate, and orderly competition of circulation loop.

The first case on vertical monopoly agreement disputes in China, Beijing Ruibang Company V. Johnson Company was a convictive illustration. This paper analyzed the connotations and forms of vertical territorial and customer restrictions respectively, explained them by relevant economic theories combined with modern distribution system and enforcement practices, analyzed their anticompetitive effects, and clarified the necessities of proper antitrust regulation based on the detailed analysis of the first vertical monopoly agreement disputes. It finally puts forward the rule of reason to exempt particular practices from vertical territorial and customer restrictions, so as to maintain the balance between social and economic development and interest of consumers.

2. Connotations and forms of Vertical Territorial and Customer Restrictions

2.1 Vertical Territorial Restriction

Vertical territorial restriction is an important form of vertical non-price restrictions, which is defined as agreements or concerted conducts for the direct or indirect purpose of restricting downstream buyers' (i.e., wholesalers or retailers, sometimes also called brokers) resale territories, manifested as restrictions on vendors for manufacturers or retailers for wholesalers. In a service franchising agreement, it can be described as franchise's restricting territorial scope for franchisees providing service. Vertical territory restriction includes: I. Prohibiting vendors to approach customized goods or service outside exclusive territories; II Prohibiting vendors to reach customers by general advertising or promotion in media or on the Internet in non-exclusive territories; III Speculating vendors to launch marketing activities in designated territories so as to reduce actual possibilities of cross-passive sales; and IV. Prohibiting vendors any cross-regional passive sales, that is, vendors cannot provide goods and service within exclusive territories even if other undertakings take the initiative to provide an offer or solicitation.

Judging from the law enforcement cases in China, manufactures tend to use contracts to realize vertical territorial restriction. In distribution contracts, it's often worded as "prohibiting sale outside territory", "prohibiting goods outside territory", "controlling circulation of goods" etc., which are complemented by a series of mandatory means of prohibition or inducement, such as verbal or written warnings, fines, denial rebates, margins deducted, suspension of goods etc.. For example, in both cases of Mao-tai Group and Wu Liang Ye Group of China which were first punished and milk –powder companies including Bios time and Mead Johnson Co., vertical territorial restriction have been implemented at varied degrees by means of contracts and assessment policies. Although they eventually were fined for vertical price restriction, the conducts of above undertakings indicated that price controlling originated from prohibition of sale and commodity price was inevitably linked with standards of outside-territory sale, which essentially was the typical expression of vertical price restrictions.

2.2 Vertical Customer Restriction

Vertical customer restriction could be described that manufacturers restrict the scope of customers to whom distributors can provide goods and services. In a service franchising agreement, it also exhibits restriction about the territorial or customer scopes on franchisees providing service. These customers should be in the same goods or service market with the same willing, which refer to final consumers, retailers and brokers continued to sale. The restriction is evidently different from horizontal customer restriction, which competitors divides customers or commodity market, and restricts free competition among undertakings. Vertical customer restriction includes following circumstances: I. Producers restrict each distributor resale goods available only to their respective customers (coincide with vertical territorial restriction); II. Producers retain exclusive right of resale goods directly to their public institutions, only allow vendors to approach customers outside the public institutions (even in their respective exclusive territories), which could be understood manufacturers hold stable customers for themselves; III. Producers ban all vendors to approach final consumers; IV. For car industry, vendors are forbidden to use spare parts which may be parts of other products by producers; V. In a selective distribution agreement, manufacturers prohibit three conducts of vendors: to approach other unauthorized vendors, end users, or cross delivery among vendors in the same or different phase of sale.

In fact, in modern distribution system practices, manufacturers always tend to impose vertical customer restriction on distributors, which is the intention either for keeping fixed customers for themselves or controlling customers by distribution members. For example, the judicial practices of United States involved vertical customer restriction are common in situations where manufacturers keep fixed customers for themselves, while European Union is common in restricting vendors to approach end users.

From enforcement practices in China, vertical customer restriction happened to situation where manufacturers restrict vendors to sell goods and service to customers. Therefore, only regulating vertical price restriction may be far from enough, market undertakings still are able to control price by means of vertical non-price restrictions represented by vertical territorial and customer restrictions.

3. Economic Analysis of Vertical Territorial and Customer Restrictions—Arbitrage

In essence, manufacturers' territorial and customer restrictions on vendors are the conduct that intervening free market allocation, limiting freedom of customer choices, restraining normal arbitrage activities between sellers and buyers in the same or different regions, including restraint of customers' arbitrage activities, and hindering free diffusion efficiency of commodity circulation, thus greatly limiting or eliminating competition. Arbitrage is to buy at lower prices, then to sell at higher prices, thus obtaining non-risk revenue in situation where one physical assets or financial assets(in the same or different market) have two prices. Generally speaking, the market will guide goods and services from high price buyers to low price one, or vice verso. Besides, normal goods always flow from areas with high distribution efficiency to low one. The higher circulation efficiency is, the less time and costs are consumed, and the lower distribution costs are introduced. In fact, when low-cost goods are sold by low price, which led to eliminating inefficient vendors, production efficiency could be achieved; when market guides goods and service shift from high-price buyers to low-price ones, or vice verso, locative efficiency could be achieved. Due to differences such as distribution costs, regional needs, economic environment, marketing mode, management mode, service provided and expenditure of human cost for each independent distributor, retailers can determine their own selling prices under the condition of free market competition according to their costs and profit rates, which cause the imbalance of distribution efficiency for each vendor, resulting in price difference among vendors between the same and different area, which is a reasonable price difference under the market competition. The price difference among vendors tend to bring about arbitrage opportunities for customers, and allow customers normal arbitrage activities which help to expand free flow of goods, promote free circulation efficiency, enhance competition vigor in the same or different region so as to promote the realization of unification of circulation market and improve the whole social welfare.

However, because of differences in factors such as customers' needs and preferences, their abilities to withstand price of goods can also be different, some customers are always likely to buy cheap goods, others are also willing to continue buying high ones. Customers could completely choose vendors with high price and service according to their respective requirements, or vendors with poor but relatively cheap service, thus satisfy all customers' needs. Meanwhile, it will stimulate all vendors make efforts to promote efficiency and improve customer service.

In addition, vertical territorial and customer restrictions will also try to block competition arbitrage activities within the same brand, especially when consumers' demand is concentrated on the particular brand. The competition arbitrage refers to adjusting supply and demand in the absence of restriction for the buying and selling of commodities. If popular goods are short of supply, vendors always tend to increase price of goods; if goods are sufficient, efficient vendors will make profits close to cost, accordingly price will drop. Goods could be allocated to consumers with automatic adjustment mechanism, efficient vendors with the lowest price will get more sales, and customers can obtain goods as low as possible. And vice verso, efficient allocation among vendors will be blocked. On the one hand, efficient vendors can increase sales by reducing price as much as possible; on the other hand, inefficient vendors are difficult to be eliminated, and market mechanism is hard to play role in selecting the superior and eliminating the inferior, distribution efficiency and innovation are also difficult to maintain. Besides, vertical territorial and customer restrictions make their promotions lock certain brands by improving retailers' profits, increase the risk of consumer information gap exploited by vendors, and intensify the risk of abuse of information asymmetries, thus customers grasp insufficient information with weak power, and vendors with preferential price are unable to act as arbitrageurs, difficult to achieve goods which are to buy at the lowest price but sell at the highest.

As a result, the normal arbitrage activities under free market competition can realize the balance of market price by promoting free diffusion of circulation efficiency, eventually enhancing customer welfare. Continuing allowing producers to put vertical territorial and customer restrictions into effect which lead to each vendor with unbalanced efficiency can only lock existing customer group, high efficient vendors cannot expand their production scales to further increase customer scales, extend and diffuse high efficiency by goods flow through customer arbitrage activities, and unable to realize independent price under free competition, and eventually difficult to improve customer welfare.

4. Anticompetitive Effects of Vertical Territorial and Customer Restrictions

4.1 Anticompetitive Effects of Vertical Territorial Restriction

4.1.1 Obstruct free Diffusion of Commodity Circulation Efficiency, and Limit Initiative and Orderly Competition, Thereby Affect Enhancement of Overall Efficiency

As discussed above, manufacturers restricting territories would make high efficient vendors who broke price restriction still cannot achieve effective conductivity and diffusion of efficiency, and cannot stimulate low efficient vendors improve backward links to avoid being excluded from the market by producers, eventually efficiency of the whole circulation would get radically improved, also greatly reduced the possibility of cutting prices by vendors. Meanwhile, the imprisonment of circulation efficiency through free diffusion would be more likely to confusion of downstream price, thus producers felt compelled to take constraint measures to intervene, and further restrain circulation competition, which continually touched a legal red line.

4.1.2 Damage Free Operation of Downstream Undertakings, Weakenintra-Brand Competition and Facilitate Vendors' Conspiracy of Market Division

Manufacturers artificially segmented the unified market, thus limited the free circulation of goods for downstream operators, damaged free operation of downstream undertakings, and also the whole economic vigorous and efficiency, resulting in the competition impairment in the same brand, which is equivalent to divide market collusively among vendors, so as to easily be seen as an allocation behavior clearly forbidden by AML. In particular, when most vendors have taken vertical territorial restriction, it's easy to promote the collusion of manufacturers and vendors.

In addition, vertical territorial restriction does help to protect vendors from restriction of intra-brand competition, thus ensuring profits. Terminating this distribution agreement is a costly affair for vendors due to profits. Therefore, vendors would prefer to comply with contract terms whatever they are, which make manufacturers facilitate price control.

4.1.3 Increase Oversight and Control Pressure of Downstream Operators, and Breed Soil for Implementation of Vertical Territorial Restriction for Manufacturers

Since manufacturers divided each distributor's sale market in advance, they would inevitably take means to monitor downstream operators for preventing arbitrage activities among vendors, which increased their pressure of controlling. But from enforcement practices, even if manufacturers make efforts to prohibit sale outside territory, the effect is not ideal so that manufacturers return to use previous measures of price control, particularly all reasonable or unreasonable low-price conducts in order to avoid sale outside territory, and this will precisely breed vertical price restrictions.

4.1.4Obstruct to Develop New Sale Gap or Create Sale Channels of Downstream Operators, and Reduce the Use Efficiency of Sale Channels

Since manufacturers implement vertical territorial restriction on downstream vendors, resulting that vendors have no incentive to develop new sale gap in the market, worried that the risk of default led to cancellation of distribution contracts. Due to fixed sale channels, vendors also have no incentive to innovate sale channels for promotion of circulation efficiency under the pretext of maintaining a fixed level of profits and reducing the cost of loss. In addition, the Internet mode is to be prohibited as passive sale, which is not beneficial to compare prices for consumers, thus benefiting from price variance, and neither convenient for fair transaction, nor help eliminate negative pressure from price difference of different geographical markets, let alone to increase the efficient use of channel. So these are not conducive to promote or improve the whole efficiency of sale channel.

4.1.5 Damage the Legitimate Interest of Consumers

Vertical territorial restriction has excluded an important even critical factor—consumer interest. Whether they're manufacturers or downstream undertakings, they would design operating mode from their own interests, trying to achieve maximization benefits. On the one hand, they exclude free choices of consumers; on the other hand, they require consumers accept unconditionally designed restrictions. When only vertical price restrictions rather than vertical territorial restriction are prohibited, consumer choices are artificially reduced, consumers would get similar merchandises with the same brand which price is controlled.

Such market bound with goods is not competitive without dynamics, this market will make no competition among vendors from selling the same kind of goods, and no competitive vendors may take use of price discrimination because of geographical division, even reach the price cartels among producers or vendors for monopolizing market in order to obtain maximum benefits, and consumers will lose benefit chances of free competition by their monopoly conducts. Especially when prices rise, consumers cannot vote with their feet, market price equalization cannot be realized by personal movement, limiting consumer arbitrage activities, thereby loss of consumer profits will be difficult to avoid.

5. Anticompetitive Effects of Vertical Customer Restriction

5.1 Facilitate Price Discrimination for Producers, and Restrain Arbitrage Activities of Vendors and Customers

Implementing price discrimination is not only able to identify customer groups which are willing to pay different price, but also prevent arbitrage activities. Vertical customer restriction should satisfy the two important conditions of price discrimination: on the one hand, divide vendors among different regions according to consumers' purchase power; on the other hand, lock in customer groups can also make vendors hard to free chose resale customers, and hard to achieve normal arbitrage activities. For example, dis-infection products made by manufacturers can be used in hospitals, also in restaurants. For the hospital, the alternatives for dis-infection products are not much, which lead to preferentially pay higher price than the restaurant. Manufacturers at present can request one vendor must supply to the hospital, another to the restaurant, with two different vendors by contract. At this point, producers are able to implement price discrimination among different customer groups. Or producers can participate in the "dual-track" sales, which one is directly to the hospital, another is to restaurants through an independent distributor. In this condition, vertical customer restriction makes producers easy to divide customer groups, prevent customer arbitrage activities and convenient to implement price discrimination. Therefore, producers clearly specify that different and efficient vendors can only resale fixed and divided groups, which not only restrict normal arbitrage activities of customers with right of free choice of goods, and restrain arbitrage activities of vendors with different distribution efficiencies.

5.2 Facilitate Price Fixing for Producers, and Reduce Customers' welfare

Any vendor prefers to increase sales through low price and expand own market share through efficient promotion, and other vendors can also take chances to adjust efficiency, follow price cut, and eventually make market price reach equilibrium. Therefore, producers will divide customer groups for vendors in advance, prevent vendors reducing price for particular brand of goods, reduce pressure on profit margins of producers, directly lead customers to pay higher retail price, and eventually facilitate price fixing of vendors. In fact, vertical customer restriction essentially has become an indirect means to maintain price aiming to particular customers, reduced chances such as lower price, more transparent and contact extensively with market for customers.

5.3 Inhibit Choice Interest, and Reduce Weighing Welfare of Customers

In general, if vendors provide less service, customers will prefer to free purchase goods or service from efficient vendors. Vertical customer restriction apparently deprives customers of chances in weighing cost and revenue of buying, then forces customers likely to purchase goods from vendors, except that vendors can provide specific service producers cannot provide. Compared with producers, vendors can be more efficient in providing the same service, because the breadth and depth of distributors' service can make goods effective and affordable to consumers. In addition, in the case of producers who keep regular customers, it will be hard to have power to deal with fixed customers, once producers can avoid competition from vendors. After all, whether service is provided and whether service is high or low etc. will not cause too heavy impacts on producers, and rule out more efficient vendors in the market, even if they have more advantages in price due to internal cost structure. From this view, vertical customer restriction will hamper customers' free choices, result to high commodity prices, falling market coverage, spatial convenience reduced, and eventually reducing weighing welfare of customers.

5.4 Interfere with Optimal Allocation of Resources, and Hinder Fair Competition of Commodity Market

In the open and transparent market, consumers are more willing to enjoy lower prices and less service, however vertical customer restriction can help producers achieve product differentiation, once vendors can avoid intra-brand competition, they would like to invest on product promotion, and offer more service for customers, which have deepened consumers' awareness of product differentiation.

Due to reliance on fast turnaround to maintain profits, vendors have no incentive to store the new goods, and also fail to allocate resources to low-profile goods, resulting to unreasonable allocation of resources, eventually isolated producers' new products. Lack of channel support, producers are hard to enter the market, few are willing to run risk of entering the market for meeting the unmet demand so as that customers cannot ensure the open market met their whole demands.

Above all, vertical territorial and customer restrictions are not just to restrict intra-brand price competition from the surface, but also restrict inter-brand price competition from circulation process of the whole commodity-trading, thus making price resale to a third party deviate value of goods, finally becoming a direct way to maintain resale price of goods in disguise. Summarized the above anticompetitive effects, the reasons for prohibiting vertical monopoly agreements are these monopoly conducts obtained self-interest through direct or indirect harms on other and social interest by several even hundreds of times, which is the conduct extremely against competition, efficiency and market, seriously breach of business ethics. One of the significant characteristics of vertical monopoly is hidden hazards outweigh dominant ones, and group harm outweigh individuals. When the market are covered by most vertical monopoly agreements, their impacts on competition limitation and economic efficiency are even higher than horizontal cartels, for example, crystal meetings organized by LCD undertakings caused LCD panel prices artificially increased 1%-2%. However, according to down stream operators' price behavior carried on the substantive punishment by individual producers, the price of Mao-tai Wine at least was artificially improved by 8%-21%, and price of milk powder was at least 5%-15% before antitrust enforcement.

6. Beijing Ruibang Yonghe and Trade Co. Ltd v. Shanghai and China Johnson

Medical Device Co. Ltd—First Judicial Judgment on Vertical Monopoly Agreement

This case is the first case on vertical monopoly agreement disputes in China, and is also the first monopoly dispute case in which first final was in favor of the plaintiff since Antimonopoly Law of China(hereafter, "AML")has begun implemented in 2008. Varied vertical monopoly conducts were involved in this case, including resale price maintenance, territorial and customer restrictions etc., although Shanghai and China Johnson Medical Device Co. Ltdas two defendants were prosecuted for vertical price restrictions rather than vertical non-price restrictions. Taking final judicial sentence and actual effects of restrictions into consideration, only regulating vertical price restriction is far from enough, and regulation of vertical non-price restrictions such as vertical territorial and customer restrictions are also important.

In this case, Beijing Ruibang Yonghe and Trade Co. Ltd(hereafter, "Ruibang Company")is the dealer distributed medical stapler and suture products in the Beijing area of Shanghai and China Johnson medical device Cos. Ltd(hereafter, "Johnson Company"), with over 15 years of cooperation with the two defendants. In January 2008,Johnson Company signed the distribution contract with Ruibang Company, which stipulated Ruibang Company shall not resale suture products by less than specified product price, and must approach customers into authorized regions through making distribution regions and index clearly defined. After signing of the distribution contract, Johnson Company had issued authorized regional certificates respectively on January 1st, March 15th and June 30th, 2008. In March, Ruibang Company won the bid at the lowest price in Johnson medical suture sale bidding held in Beijing University People's Hospital. On July 1st,the defendant called Shanghai Johnson Company sent a letter to Ruibang Company, denounced its deduction deposit 20000 Yuan and cancellation distribution rights in part of hospitals on the grounded that Ruibang Company won the bid by reducing sale price at the People's Hospital tender in March and obtained unauthorized distribution rights of suture products. After 15th August, Johnson Company had no longer accepted its medical suture products orders, and deliveries were stopped completely in September. In 2009, Johnson Company couldn't renew the contract with Ruibang Company. In August 2010, Ruibang Company sued to the First Intermediate People's Court of Shanghai, accused the defendants' restraint of minimum resale price from terms of distribution contract constituted vertical monopoly conducts prohibited by AML. On May 18th, 2012,the First Intermediate People's Court of Shanghai rejected the plaintiff's claims for insufficient proofs. OnMay 28th, Ruibang Company appealed to the High Court of Shanghai against the verdict of first trial.

By successively three-times trials, the High Court of Shanghai revoked original judgment in accordance with the law, commuting the two appellees commonly compensated 530000 Yuan for economic loss while rejected other claims.

Analyzing above behaviors, authorized regions Johnson Companies speculated were to actually restrict territories and customers of dealers, whose motivation lied in the implementation of avoiding price competition strategies, thereby maintaining the price system. Johnson Companies made price controlling and territorial restrictions such as regional exclusive agent used in combination, ensuring intra-brand dealers wouldn't compete outside territory. Designated sale areas to realize regional segmentation resulted in monopoly position in the regional market, non-existing customers contesting through price competition, eventually Johnson Companies could face demand curve lack of elasticity and maintain its high price. Meanwhile, hospital customers were separated and deployed by Johnson Company, which dealers resale goods on the condition of obtaining the sale license. While a hospital would only arrange a dealer, whose unique effort was to expand sales in assigned hospitals, not for more sales in other hospitals.

In fact, Johnson Company made the pro-competitive effects of resale price maintenance exist impossible through non-price vertical restrictions, such as promotion of product qualities and new products or new brand to enter the market, prevention free-riding etc.. Therefore, non-price vertical restrictions can also produce the same effects as price restriction. The reason was that dealers' price competition space was narrowed after taking kinds of restrictive measures such as exclusive brand distribution, regional restrictions, customer deployment, short-term contracts and other arrangements under the condition of strong market position even in the relevant market of insufficient competition.

7. Proper Antitrust Regulation of Vertical Territorial and Customer Restrictions

Since resale price maintenance is specifically prohibited by AML, many manufacturers have begun to seek other alternatives for reaching the same or similar purposes, resulted that vertical territorial and customer restrictions have become the most widely used by many manufacturers in vertical monopoly agreements in practice.At present, the fourteenth provision about vertical restriction of AML just clearly stated fixing the price and restricting the minimum price for resale to a third party, but vertical non-price restrictions including territorial and customer restrictions are manifested miscellaneous provisions, which are not banned and lack of concrete rules for implementation. It's easy to cause a few producers illegally use these two agreements, just for drilling blank of weak legislation and law enforcement to realize goals of fixing the price and restricting the minimum price for resale to a third party. Meanwhile, from the economic analysis and anti-competitive effects, vertical territorial and customer restrictions do eliminate or restrict market competition in a certain degree through the analysis of first judicial judgment on vertical monopoly agreement, not only limiting normal arbitrage activities, but also facilitating price fixing. Therefore, considering these factors such as effects on consumer welfare, service output for consumers and whether service related with products satisfies consumers' willingness, proper antitrust regulation is necessary, but concrete determination of every case should also keep cautious attitude. Although it is theoretically possible to think abstractly, if economic rationality of these two restriction agreements outweigh harmfulness caused by competition limitation, laws should be lenient; and vice versa. But specific circumstances and consequences should be reasonably analyzed when referring to how grasp the above.

Reference to experiences of EU competition law, EU competition agencies have been aware regulations on vertical price restriction and non-price restrictions are the same importance at the least, only prohibition of vertical price restrictions is hard to achieve big unified market and free circulation of goods. EU competition agencies have listed vertical territorial and customer restrictions as vertical core restrictions, also regulated kinds of exceptions belong to block exemption, especially specialized industry guidance aiming to new car sale and after-sale, eventually ensuring reducing resale price through competition. Specifically, vertical restrictions defined by competition agencies include territorial or customer restrictions, limiting active or passive resale to end users for distributors and cross supply among distributors in a selective distribution etc.

8. Conclusion

For this aspect of legislation, lessons about vertical territorial and customer restrictions from the EU competition law suggest China adopt, the principle of general prohibition with certain exception.

As to what kinds of exceptions can be made in China, factors such as economy foundation and existing distribution practices should be taken into consideration as a whole. This is the one of the areas that the law enforcement authority should pay attention to in the future.

In practice, in considering whether certain vertical non-price restrictions are eligible for exemption, factors such as eliminating or restricting effects on market, impacts on consumer welfare and social public interest of conducts should be analyzed through economic theories and methods. If the conducts result in more economic interests and customers' welfare, the exemption could be applied. In addition, we should also take particular economic operating environment and industry environment etc. into consideration when legislations abroad are referred at the same time. The applicability and particularity should be paid enough attention during localized transplantation of foreign law into China.

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